

REMARKS

Claims 1-28 are pending. Claim 17 is rejected under 35 U.S.C. § 112, first paragraph. Claims 1-3, 5-11, 14-15, and 19-26 are rejected under 35 U.S.C. § 102(e). Claims 4, 12, 16, and 27 are rejected under 35 U.S.C. § 103(a). Claims 1-2, 4-5, 7-8, 14, 15-17, 20, and 22-23 have been amended.

Examiner has rejected claim 17 under 35 U.S.C. § 112, first paragraph, for reciting “said encoder is provided in said demodulator.” Claim 17 is amended to change demodulator to modulator. Support for this embodiment is provided at page 8, lines 2-5 of the instant specification. Thus, claim 17, as amended, is patentable under 35 U.S.C. § 112, first paragraph.

Applicants have amended their claim to priority to include the benefit under 35 U.S.C. 120 of copending application number 09/224,401, filed 12/31/1998, hereinafter referred to as Hosur et al. A copy of this application is included with this response. Six conditions are required for this claim to priority as stated at MPEP 201.11. First, the invention of the latter filed application must be disclosed in the prior application. Examiner has broadly interpreted the claims of the present invention to include Whinnett et al. (U.S. at. No. 6,317,411, filed 2/22/1999) as prior art under 35 U.S.C. § 102(e). In particular, Examiner refers to Figure 3 of Whinnett et al. The space time coder 60 of Whinnett et al. is the same as STTD encoder 112 (Figure 2, page 6, line 19) of Hosur et al. Moreover, exactly the same numerals (S1, S2) are used by Hosur et al. as by Whinnett et al. Thus, applicants respectfully submit that the present invention is disclosed by Hosur et al.

Second, the later filed application must be copending with the prior application. Hosur et al. is still pending and is, therefore, copending with the present application.

Third, the later-filed application must contain a specific reference to the prior application. The instant application has been amended to include a specific reference to Hosur et al. The present application has been amended to recite the serial number, filing date, and a continuation-in-part relationship with Hosur et al.

Fourth, the later filed application must be filed by an inventor or inventors named in the previously filed application. Inventor Anand Dabak is named as an inventor in both applications.

Fifth, for a utility application filed after November 29, 2000, the benefit claim must be made within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior application. Since the present claim is to priority is beyond the required date, a petition under 37 C.F.R. § 1.78(a) stating the claim was unintentionally delayed is included in the present response.

Sixth, the prior application was originally filed in English, so no translation is required.

Applicants acknowledge the rejection of claims 4, 12, 16, and 27 under 35 U.S.C. § 103(a) but believe the rejection is moot in view of the foregoing claim to priority. In view of the foregoing, applicants respectfully submit that Whinnett et al. is not prior art to the present application. Applicants respectfully request reconsideration and allowance of claims 1-28. If the Examiner finds any issue that is unresolved, please call applicants' attorney by dialing the telephone number printed below.

Respectfully submitted,



Robert N. Rountree
Attorney for Applicants
Reg. No. 39,347

Robert N. Rountree, LLC
70360 Highway 69
Cotopaxi, CO 81223
Phone/Fax: (719) 783-0990